

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 844 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 : No

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STATE OF GUJARAT

Versus

RATNABHAI RUMALBHAI TAHKOR

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Appearance:

Ms. Ami Yagnik, APP, for appellant  
MR NS DESAI for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL and  
MR.JUSTICE M.H.KADRI

Date of decision: 28/04/99

ORAL JUDGMENT (Per: Kadri, J.)

1. Acquittal of the respondent recorded by the learned Assistant Sessions Judge, Nadiad, in Sessions Case No.78 of 1991, vide judgment and order dated October 10, 1991, of the offences punishable under Sections 306 and 498A of the Indian Penal Code, is subject matter of challenge in the present appeal which is filed by the State of Gujarat under Section 378 of the Code of

2. The prosecution case in nutshell is summarized as under: Complainant, Malabhai Chhanabhai, was residing at Limbervada, Taluka Balasinhor. He had two sons and two daughters and one daughter Kaliben was married to the respondent prior to three years of the date of incident, i.e. December 4, 1990. The respondent was staying with Kaliben at village Motikhant-na-Muvada, Taluka Balasinhor. It is the case of the complainant that Kaliben had returned to her matrimonial home prior to 3-4 days of the date of the incident and had told the complainant that she would not go back to the house of the respondent. Kaliben told the complainant that the respondent was beating her. It is also alleged by the complainant that, prior to 6-8 months of the date of incident, Kaliben had come to the house of the complainant and had complained that the respondent was treating her with cruelty. The complainant had scolded the respondent and had told him that he should not treat his daughter with cruelty and should not beat her. In spite of this request, the respondent did not improve and had continued giving beating and treating deceased Kaliben with cruelty. It is alleged in the complaint that, due to the cruelty meted out to Kaliben since last 7-8 months, she was compelled to commit suicide by taking poisonous substance on December 4, 1990 in the early morning hours. The complainant, therefore, filed complaint before the Deputy Superintendent of Police, Kapadwanj Division, on December 4, 1990. The Deputy Superintendent of Police, Kapadwanj Division, Mr. Nitiraj Singh Dayaji Solanki, started investigation and visited the place of incident at village Motikhant-ni-Muvada. The Deputy Superintendent of Police, after visiting the place of incident, had recorded the statement of the complainant, Malabhai Chhanabhai, who is the father of deceased Kaliben. Further investigation was handed over to PSI, Mr. P.M. Patel, of Virpur Police Station. Mr. P.M. Patel went to Virpur Primary Health Center and held inquest of the dead body of deceased Kaliben. The dead-body of Kaliben was sent for post-mortem. Dr. Natwarlal Manilal performed post-mortem at 11 a.m. on December 4, 1990. During the post-mortem, portions of small intestine and stomach, liver, lungs, kidney, span, and heart, were collected and kept in one glass bottle with preservative Sodium Choloride. The viscera was sent for analysis to the Forensic Science Laboratory. Investigating Officer, PSI, Mr. Patel, recorded statements of witnesses, and, after receipt of the reports from the Forensic Science Laboratory, filed chargesheet against the respondent in

the Court of the learned Judicial Magistrate, First Class, Balasinhor, of the offences punishable under Sections 306 and 498A of the Indian Penal Code. As offence punishable under Section 306 of the Indian Penal Code is exclusively triable by the Sessions Court, the case was committed to the Sessions Court, at Nadiad, where it was numbered as Sessions Case No.78 of 1991. The learned Assistant Sessions Judge, Nadiad, framed charge against the respondent at Exh.2, of the offences punishable under Sections 306, 498-A, of the Indian Penal Code. The charge was read over and explained to the respondent who pleaded not guilty and claimed to be tried. Therefore, the prosecution examined (1) Dr. Natwarlal Manilal, P.W.1, at Exh.6, (2) Sattarbhai Rasulbhai P.W. 2, at Exh.9, (3) Hirabhai Salubhai P.W.3, at Exh.11, (4) Hirabhai Salubhai P.W. 4, at Exh.12, (5) Kalubhai Nathabhai P.W.5, at Exh.16, (6) Malabhai Chhanabhai (Complainant) P.W.6, at Exh.17, (7) Ramabhai Chhanabhai P.W.7, at Exh.19, (8) Nitirajsingh Dahyaji Solanki, P.W.8, at Exh.20, and (9) Prahlata Vanjabhai Patel, P.W.9, at Exh.22, to prove the case against the respondent. The prosecution also produced documentary evidence such as post-mortem notes at Exh.7, inquest panchanama at Exh.10, panchanama of place of occurrence at Exh.13, report of the Forensic Science Laboratory at Exh.29, etc. in order to bring home guilt to the respondent. After recording of evidence of prosecution witnesses was over, the learned Judge questioned the respondent generally on the case and recorded his further statements under Section 313 of the Code of Criminal Procedure, 1973. In his further statement, the respondent denied the case of the prosecution and stated that he has not committed any offence. However, the respondent did not lead evidence in defence.

3. On appreciation of evidence led by the prosecution, the learned Assistant Sessions Judge deduced that the oral testimony of complainant, Malabhai, P.W.6, at Exh.17, was very much inconsistent with the complaint lodged by him. It was observed by the learned Judge that in the complaint it was not mentioned that what was the reason for beating deceased Kaliben, whereas in his oral deposition, complainant, Malabhai, stated that the reason for beating deceased Kaliben by the respondent was that since she was of dark complexion the respondent did not like her. It was further observed by the learned Judge that, in the oral deposition, the complainant deposed that about 2 months prior to the date of incident, he had met the respondent and had requested not to beat his daughter Kaliben, whereas in the complaint no such mention was made that the complainant had met the

respondents prior to two months of the date of the incident. The learned Judge concluded that there was no positive evidence that the respondent was beating his wife, Kaliben, prior to 7-8 months of the date of the incident, i.e. December 4, 1990. The learned Judge further concluded that the conduct of the complainant was not natural and the version of cruelty as deposed by him in the Court was highly improbable. The learned Judge has further deduced that the evidence of uncle of deceased Kaliben, viz. Ramabhai Chhanabhai, P.W.7, Exh.19, was also highly improbable and unreliable as there were many contradictions as compared to his statement made before the Investigating Agency. At the end, the learned Judge concluded that evidence of complainant, Malabhai and his brother Ramabhai, Exh.19, did not inspire confidence, and the evidence does not show that deceased Kaliben was treated with cruelty as a result of which she was compelled to commit suicide by taking poisonous substance. In the ultimate decision, the learned Judge acquitted the respondent by judgment and order dated October 10, 1991, giving rise to the present appeal.

4. Ms. Ami Yagnik, learned Additional Public Prosecutor, for the State of Gujarat, has submitted that the evidence of complainant, Malabhai, corroborated by the evidence of the uncle of deceased Kaliben, namely, Ramabhai Chhanabhai, Exh.19, proves beyond doubt that deceased Kaliben was treated with cruelty by the respondent as a result of which she was compelled to commit suicide by taking poisonous substance on December 4, 1990. It is submitted that the learned Assistant Sessions Judge has erred in holding that there were inconsistencies in the evidence of the complainant as compared to the allegations made in the complaint and, therefore, his evidence was highly improbable and unreliable. It is claimed that the inconsistencies, which have been noted by the learned Assistant Sessions Judge, were minor which ought to have been ignored by the learned Assistant Sessions Judge. It is further stressed that there was cogent and reliable evidence of the complainant and his brother Ramabhai to prove that the respondent had treated deceased Kaliben with cruelty and therefore she was compelled to commit suicide by taking poisonous substance. Lastly, it is submitted by the learned Additional Public Prosecutor that there is sufficient evidence produced by the prosecution to prove the guilty of the respondent and, therefore, the appeal should be accepted.

5. Mr. N.S. Desai learned counsel for the

respondent, pleaded that the prosecution has not led sufficient evidence to prove that the respondent had treated Bai Kali with cruelty as a result of which she was compelled to commit suicide by taking poisonous substance. It is submitted that the evidence of prosecution witnesses, namely, (1) complainant Malabhai Chhanabhai and (2) Ramabhai Chhanabhai, was highly contradictory and untrust-worthy and the learned Assistant Sessions Judge has rightly discarded their evidence and held that the prosecution has miserably failed to prove that the respondent had treated his wife Kaliben with cruelty and had abated commission of offence under Section 306 of the Indian Penal Code. It is submitted by the learned counsel for the respondent that, this being an acquittal appeal, the Court should be loathe in interfering with the order of acquittal and, therefore, there being no merits in the appeal filed by the State, the same should be dismissed.

6. We have been taken through the entire evidence on record of the case by the learned counsel appearing for the parties. In our view, the evidence of the complainant, who is the father of Bai Kali, does not inspire confidence, as there are many contradictions in his oral deposition before the Court as compared to the compliant lodged by him before the Deputy Superintendent of Police. Similarly, the oral testimony of the brother of complainant, namely, Ramabhai Chhanabhai, also is not trustworthy and no reliance could be placed on such contradictory version as found in his evidence. No positive evidence was led by the prosecution to prove that deceased Kaliben was meted out cruelty by the respondent. It is true that deceased Kaliben had committed suicide within a span of three years of her married life with the respondent and, therefore, question whether presumption under Section 113A of the Evidence Act would be attracted to the facts of this case arises for consideration. We may state that presumption under Section 113A of the Evidence Act would arise only when prosecution establishes that deceased Kaliben was treated with cruelty by the respondent which led her to commit suicide by taking poisonous substance. The evidence produced by the prosecution, in our opinion, does not establish beyond reasonable doubt that deceased Kaliben was treated with cruelty by the respondent. Mere allegations made by the complainant and his brother Ramabhai are not sufficient to establish that deceased Kaliben was treated with cruelty by the respondent. The evidence which is produced by the prosecution does not establish beyond doubt that deceased Kaliben was treated with cruelty by the respondent as a result of which she

was compelled to commit suicide by taking poisonous substance on December 4, 1990. Further, the prosecution evidence does not establish that the respondent's conduct had compelled the deceased to commit suicide so as to attract the provisions of Section 306 of the Indian Penal Code. The person against whom the charge of abatement is levelled must have done something in order to facilitate commission of offence. In absence of any positive evidence, the learned Assistant Sessions Judge was justified in holding that the prosecution has failed to prove beyond reasonable doubt that the respondent had committed offence under Sections 306 and 498A of the Indian Penal Code and the findings of the learned Assistant Sessions Judge are quite just and proper and we do not see any reason to interfere with those findings. Hence, it cannot be said that any error is committed by the learned Assistant Sessions Judge in acquitting the respondent of the offence with which he was charged.

7. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Assistant Sessions Judge who had an advantage of observing demeanour of witness. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Assistant Sessions Judge for acquitting the respondents. Suffice it to say that the learned Assistant Sessions Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Special judge in order to convince us to take the view contrary to the one already taken by the learned Judge. Therefore, the acquittal appeal deserves to be dismissed.

8. For the foregoing reasons, we do not find any substance in the appeal. The appeal, therefore, fails and is dismissed. Muddamal articles be destroyed in the terms of the impugned judgment.

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